IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Sunil Kumar & Others Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.1121/2004)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 30-9-2004 in Sessions Case No.20/2003 (193/02) passed by Sh. Anil Kumar Suroliya, RHJS, Additional Sessions Judge (Fast Track) No.1, Jhunjhunu.

Date of Judgment: March 22, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Biri Singh Sinsinwar] for the appellants.
Mr. Kamlendra Sihag]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Sunil Kumar, Mukesh Kumar, Jagat Singh and Smt. Kisturi Devi, the appellants herein, were put to trial before learned Additional Sessions Judge (Fast Track) No.1 Jhunjhunu, who vide judgment dated September 30, 2004 convicted and sentenced them as under:-

Sunil Kumar:

U/s.304B IPC:

To undergo rigorous imprisonment for ten years and fine of Rs.2000/- in default to further suffer two months simple imprisonment.

Sunil Kumar, Mukesh Kumar, Jagat Singh and Smt. Kisturi Devi:
U/s.498A IPC:

Each to undergo three years rigorous imprisonment and fine of Rs.500/- in default to further suffer fifteen days simple

imprisonment.

U/s.406:

Each to pay fine of Rs.1000/- in default to suffer one month simple imprisonment.

The substantive sentences were ordered to run concurrently.

2. The informant Rajpal (Pw.1) submitted a written report at Police Station Surajgarh on July 11, 2002 with the averments that two years back his sisters Rajbala was married to Sunil and Bimla was married to Mukesh. Sufficient dowry was given but immediately after the marriage his sisters were harassed for insufficient dowry and the in-laws demanded scooter and money. On the said day he was informed that Rajbala committed suicide by jumping into the well. On that report case was registered and investigation commenced. Dead body was subjected to autopsy. Statements of witnesses were recorded. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Jhunjhunu. Charges under sections 498A, 304B and 406 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 14 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence and stated that Rajbala herself committed suicide by jumping into the well because she had illicit relationship with one Prithvipal. Two witnesses Santosh (Dw.1) and Ashok (Dw.2) were examined in support of defence version. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Learned counsel for the appellants made following

submissions:-

(i) No specific allegation of demand of dowry has been levelled against the appellants.

(ii) Rajbala committed suicide because her Jija Prithvipal, with whom she had illicit relations, was restrained to come in the village.

4. Coming to the evidence adduced at the trial I notice that Ram Lal, IO (Pw.13) admitted that deceased had illicit relations with Prithvi Pal. In his cross examination he stated as under:-

> "संतोष ने यह भी बताया था कि पडोसियों ने भी प्रथ्वीपाल का राजबाला और बिमला के साथ आपत्तीजनक स्थिति में कई बार देखा था। ये भी संतोष ने बताया था कि घटना से दो माह पहले जगत सिंह और पडोसियों ने प्रथ्वीपाल को घर आने से मना कर दिया था और इस बात को लेकर कहा सुनी भी चली थी। तफतीश में ये भी आया है कि जगत सिंह अपने छोटे लडके के साथ अलग रहता था और सुनील तथा उसकी पत्नी अलग रहते हैं जिसका राशनकार्ड लगा हुआ है जो मेरे को दौराने तफतीश पेश किया था।"

5. Conjoint reading of statements of other prosecution witnesses also shows that deceased was never harassed in connection with demand of dowry and she committed suicide because her relations with Prithvipal came to the light.

6. The expression `dowry' is defined by Section 2 of the Dowry Prohibition Act,1961 (for short `the Act'), as meaning anything which is given either directly or indirectly, by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person" at or before or after the marriage as consideration for the marriage of the said

parties. The act has been amended by Act 63 of 1984 and Act 43 of 1986. Formerly dowry was defined as property given as consideration for the marriage but the words “as consideration for the marriage” have been omitted and substituted by the words “in connection with the marriage”. Now dowry means any property given or agreed to be given by the parents of a party to the marriage at marriage or before marriage or at any time after marriage in connection with the marriage.

7. Considering the definition of dowry their Lordships of Supreme Court in Reema Aggarwal Vs. Anupam (2004)3 SCC 199, indicated thus:-

(Para 14)

> “The definition of the term “dowry” under Section 2 of the Dowry Act shows that any property or valuable security given or “agreed to be given” either directly or indirectly by one party to the marriage to the other party to the marriage “at or before or after the marriage” as a “consideration for the marriage of the said parties” would become “dowry” punishable under the Dowry Act. Property or valuable security so as to constitute “dowry” within the meaning of the Dowry Act must, therefore, be given or demanded “as consideration for the marriage”.

8. Interpreting the words “in connection with the marriage of the said parties”, the Apex court in Satvir Singh Vs. State of Punjab (2001)8 SCC 633, propounded as under:-

> “The word “dowry” in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act,1961. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is “at any time” after the marriage. The third occasion may appear to be an unending period. <u>But the crucial words are “in connection with the marriage of the said parties”. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection</u>

> with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies prevalent in different societies. Such payments are not enveloped within the ambit of "dowry".
>
> (Emphasis supplied)

9. The word "agreement" referred in Section 2 has also been considered in Pawan Kumar Vs. State of Haryana (1998)3 SCC 309, by their Lordships of Supreme Court and it was observed as under:-

(Para 16)

> "Demand for dowry neither conceives nor would conceive of any agreement. The word "agreement" referred to in Section 2 of the Dowry Prohibition Act,1961 has to be inferred on the facts and circumstances of each case. The interpretation that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or talking dowry and Section 4 which deals with penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. This leads to the inference, when persistent demands for TV and scooter are made from the bride after marriage or from her parents, it would constitute to be in connection with the marriage and it would be a case of demand of dowry within the meaning of Section 304-B IPC. It is not always necessary that there be any agreement for dowry."

10. That takes me to the question as to whether the appellants have committed the dowry death of Rajbala? The prosecution failed to prove that there was harassment or cruelty to the deceased wife by the husband after the marriage in connection with any demand for dowry. Therefore the appellants cannot be said to have committed offence under S.304-B.

11. A bare look at the evidence on record goes to show that the harassment or cruelty meted by the deceased was not in connection with any demand of dowry. But the possibility that her husband Sunil Kumar treated her cruelly, cannot be ruled out. Existence of a proximate and live link between the effects of cruelty based on demand and the death is missing. Rajbala met with the death because her husband treated her cruelly because she had relations with Prithvi Pal. Clause (a) of the Explanation under section 498-A IPC defines cruelty to mean a "willful conduct of the husband of such nature as is likely to drive the woman to commit suicide". In the instant case it is established from the ocular evidence that Rajbala died because of restriction on her Jija Prithvi Pal. Since on the date of incident deceased and her husband Sunil were residing separately, charges under sections 498A and 406 IPC are not proved against the appellants Mukesh Kumar, Jagat Singh and Smt. Kisturi Devi, who were residing in another house. In the facts and circumstances of the case charges under sections 304B and 406 IPC are not established against the husband. However charge under section 498A IPC is proved against him.

12. For these reasons, I dispose of instant appeal in the following terms:-

(i) I allow the appeal of appellants Mukesh Kumar, Jagat Singh and Smt. Kisturi Devi and acquit them of the charges under sections 406 and 498A IPC. All the three appellants are on bail, they need not surrender and their bail bonds stand discharged.

(ii) I partly allow the appeal of appellant Sunil Kumar and while

maintaining his conviction and sentence under section 498A IPC, I acquit him of the charges under sections 304B and 406 IPC. Appellant Sunil Kumar has already suffered the sentence awarded to him under section 498 A IPC and he is in jail, he shall be set at liberty forthwith, if not required to be detained in any other case.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

arn/